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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/823,204      | 04/13/2004  | Andy Kenowski        | 470037.90718        | 4051             |

26710 7590 11/25/2005

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| EXAMINER |
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STINSON, FRANKIE L

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| ART UNIT | PAPER NUMBER |
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1746

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                       |  |  |
|------------------------------|---------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/823,204  | <b>Applicant(s)</b><br>KENOWSKI ET AL. |  |
|                              | <b>Examiner</b><br>FRANKIE L. STINSON | <b>Art Unit</b><br>1746                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn in favor of the following Final Rejection. It is noted that the claims were amended June 24, 2005 to overcome the Rejection dated Feb. 24, 2005.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schmidt (U. S. Pat. No. 6,014,994).

Re claim 1, Schmidt is cited disclosing a clean-in-place system for cleaning an apparatus (filling machine 1), the system comprising:

a tank (13, 14, 15 or 16) containing a fluid composition having a measurable physical property at a first measured value, the tank having a supply valve (flap 44) and a return valve (flap 52);

a fluid supply conduit (57, 3a) in fluid communication with the supply valve of the tank and an inlet of the apparatus;

a fluid return conduit (3b) in fluid communication with the return valve of the tank and an outlet of the apparatus;

a physical property (conductivity and temperature) sensor (64, 65) in the fluid return conduit for repeatedly sensing the measurable physical property of fluids passing

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through the fluid return conduit and for generating a physical property signal corresponding to each sensed measurable physical property;

a flow rate sensor (63) in the fluid return conduit for repeatedly sensing the flow rate of fluids passing through the fluid return conduit and for generating flow rate signals and

a controller (see col. 6, lines 3-16) responsive to physical property signals from the sensors and providing control signals to the supply valve and the return valve, the controller executing a stored program to:

open the supply valve and the return valve to circulate the fluid composition through the tank and the apparatus,

compare successive physical property signals from the sensor, and

close the return valve at a time after successive physical property signals have a deviation greater than a predetermined amount, the time being calculated dependence on the flow. It is old and well known in various arts to control, in an associated process, and various elements of the system, i.e. valving, pumps, motors as a function of system parameters. The control in Schmidt is clearly capable, through appropriate

programming, of performing the recited function. (APPARATUS CLAIMS MUST BE

STRUCTURALLY DISTINGUISHABLE FROM THE PRIOR ART >While features

of an apparatus may be recited either structurally or functionally, claims<

directed to >an< apparatus must be distinguished from the prior art in terms of

structure rather than function. >In re Schreiber, 128 F.3d 1473, 1477-78, 44

USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior

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art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); < *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original)). Re claim 2, Schmidt discloses the second tank (13, 14, 15 or 16). Re claims 3 and 4, Schmidt discloses the measurable physical parameter being pH or conductivity. Also note that Schmidt discloses a plurality of solutions with one being an alkaline solution and an acidic rinse (see col. 5, lines 17-61). Clearly various fluids may be used in the cleaning process dependent upon the type of cleaning desired and the associated parameters.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt in view of Buck (U. S. Pat. No. 6,089,242).

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Claim 6 defines over Schmidt only in the specific recitation of the physical property being measured being that of the fluid's pH. Buck is cited disclosing in a clean-in-place system, the arrangement of sensing the process fluid's pH (col. 5, lines 5-15). It therefore would have been obvious to one having ordinary skill in the art to modify the device of Schmidt, to sense the pH of the process fluid as taught by Buck, for the purpose of ensuring proper and thorough cleaning. Furthermore, the same is also deemed to be an obvious extension of the teachings of Schmidt, in that Schmidt desires to sense multiple physical parameters of the process fluid and to include an additional parameters, is therefore deemed to be a mere extension.

4. Applicant's arguments filed June 24, 2005 with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection. In regard to the remarks that van de Berg fails to disclose the inclusion of the flow rate as a parameter in operating the cleaning process, it is and well known to include more than one parameter/property to control a washing process. Clearly, temperature, conductivity or pH properties could all be incorporated in the control process as is common in the art. Nonetheless, Schmidt and Buck are now cited.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANKIE L. STINSON whose telephone number is (571) 272-1308. The examiner can normally be reached on M-F from 5:30 am to 2:00 pm and some Saturdays from approximately 5:30 am to 11:30 am.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr, can be reached on (571) 272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

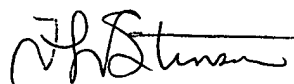
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Fls



FRANKIE L. STINSON  
Primary Examiner  
GROUP ART UNIT 1746